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ABSTRACT

Information is provided about the legal developments affecting the educational rights of homeless students that were made by the McKinney Homeless Assistance Amendments Act of 1990 (P.L. 101-645). Presented in three parts, Part 1 gives an overview of some of the problems that keep homeless children from attending school or hindering their achievement in school. These difficulties include residency requirements, problems with school and immunization record transfers, transportation and guardianship requirements, and eligibility for supplementary school services. The text of the Act is presented in Part 2, along with excerpts from the House Committee Report and the Senate and House Floor Statements. In Part 3, materials from the Department of Education regarding the implementation of the Act are presented. These include a memo to state coordinators for education of homeless children and youth with accompanying questions and answers and a memo to states regarding 1991 applications for funding. The final section also includes the Center for Law and Education comments on "Transportation Provisions of Massachusetts Draft Revised State Plan to Address the Educational Needs of Homeless Children and Youth." (KM)

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SUPPLEMENT TO

Materials on

THE EDUCATION of HOMELESS CHILDREN

May, 1991

(First Edition: December, 1987)

This supplement provides information about legal developments affecting the educational rights of homeless students which were made by the McKinney Homeless Assistance Amendments Act of 1990 (P.L. 101-645)

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Supplement to

MATERIALS ON THE EDUCATION OF HOMELESS CHILDREN

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CENTER FOR LAW AND EDUCATION
955 Massachusetts Avenue, Cambridge, MA 02139

THE EDUCATION RIGHTS OF HOMELESS CHILDREN

May 1991 Supplement[1]

INTRODUCTION

Congress initially responded to advocacy on behalf of homeless persons, including homeless school-aged children, through the July, 1987 passage of the Stewart B. McKinney Homeless Assistance Act[2]. This omnibus $1 billion legislation established many programs to aid homeless persons in fiscal years (FY) 1987 and 1988, and included a section designed to ensure equal access to education for homeless children. As originally written, the Act established a two-year program of voluntary federal grants to state educational agencies for FY 1987 and FY 1988. In November, 1988, Congress reauthorized the McKinney Act,[3] including its education provisions,[4] and extended the law through FY 1990. The Act was reauthorized once again in November 1990,[5] this time with significant amendments to those provisions addressing the educational rights of homeless children and youth.[6]

STEWART B. MCKINNEY HOMELESS ASSISTANCE AMENDMENTS ACT OF 1990

As the 1990 reauthorization approached, widespread exclusion of homeless children from school continued despite the 1987 Act. Even where, pursuant to the Act, states had amended residency requirements to allow homeless children to enroll in school, barriers to enrollment, attendance and success persisted. In reauthorizing McKinney in 1990, Congress strengthened its underlying policy to encompass the review and revision by states of, in addition to residency requirements, any "other laws, regulations, practices or policies that may act as a barrier to the enrollment, attendance or success in school of homeless children and homeless youth."[7]

Towards this end, the 1990 Amendments direct participating states, in the state plans required by the Act, to demonstrate that the state and local school districts have developed, and will review and revise, policies to remove barriers to the enrollment and retention of homeless children in school.[8] In addition, state plans must now expressly address transportation problems,[9] as well as enrollment delays caused by immunization requirements, residency requirements, guardianship issues, and lack of birth certificates, school records or other documentation.[10] Plans now must also, among other things, provide for the development of programs for school personnel to promote awareness of the educational needs of homeless children; ensure that otherwise eligible children are able to participate in federal, state or local food programs as well as before- and after-school care programs; and ensure that homeless children are not isolated or stigmatized.[11] Also new are requirements that state Coordinators of Education of Homeless Children and Youth work with other state agencies and private service providers to facilitate the provision of coordinated, comprehensive services to homeless children and youth and their families.[12]

The 1990 legislation also changed the requirements for determining where homeless children will attend school. Local districts must either continue the child's education in the original school (rather than school district, as was the case in the 1987 legislation) for the remainder of the academic year (or, if the family has become homeless between academic years, for the following academic year), or enroll the child in any school that non-homeless students who live in the attendance area in which the child is actually living are eligible to attend.[13] In choosing which of these two options is in the child's best interests, local districts must consider the parents' views on school selection.[14] States and local districts must review and revise any policies that may act as barriers to the enrollment of homeless children in the schools selected under these standards.[15] As part of this review and revision process, states and localities are required to consider such obstacles as transportation; immunization, residency, birth certificate, school record and other documentation requirements; and guardianship.[16]

The 1990 Amendments did not reauthorize the exemplary grants program established by the 1987 legislation. Congress substituted a new program allowing or requiring states, under certain circumstances, to award a portion of their McKinney Act funds to local school districts for direct services and other activities related to the educational needs of homeless children and youth.[17] Whether state grants to local districts are mandatory or discretionary depends upon appropriations for the fiscal year in question (itself and in comparison to appropriations for previous years), as does the amount of money state education agencies must pass along to local districts.[18]

It appears unlikely that much new money will flow to local districts for direct services under this new program. The 1990 amendments authorize $50 million for McKinney education grants to states for FY 1991--a ten-fold increase over the previous authorization for state grants--and "such sums as may be necessary" for fiscal years 1992 and 1993.[19] For FY 1991, however, Congress actually appropriated only $7.2 million. While this represents a $2.2 million increase from the FY 1990 appropriation of $4.99 million for state grants, it should be noted that for FY 1990 an additional $2.3 million was appropriated for demonstration grants--a program no longer authorized. The total FY 1990 appropriation was thus $7.2 million, as is the FY 1991 appropriation.

IMPLEMENTATION

In instructions to states seeking third year funding under the McKinney Act (applications for which were due April 30, 1990), the U.S. Department of Education ("ED") directed states to provide evidence of "satisfactory progress toward meeting the goals of the (McKinney education) program." A GAO report issued in December 1990 found that as of May 1990 ED had not monitored any of the states that received McKinney Act children and youth funds since FY 1987.[20] As of October 1990 ED had visited three states and had plans, according to ED, for on-site visits to an additional 30 to 35 states during FY 1991.[21] The GAO report noted that, according to ED officials, the number of visits might be reduced if ED staff levels are not increased.[22]

On February 14, 1991 ED distributed an application packet for FY 1991 funds to chief state school officers, the first since the 1990 Amendments. Although the application deadline is August 30, 1991, ED has asked states to file by May 31, 1991. According to ED, it will begin to make awards on July 1, 1991. The memorandum accompanying the packet indicated that ED was in the process of revising its 1987 Non-Regulatory Guidance

for the program to reflect the 1990 Amendments. As of early May 1991, however, ED had not yet issued the revision.[23]

ADVOCACY

As was the case with McKinney as originally enacted in 1987, the 1990 Amendments give states substantial power in determining how homeless children's educational problems will be identified, evaluated and addressed. Therefore, vigorous advocacy remains imperative in order to ensure that the formulation and implementation of state policy is influenced by the experiences and views of homeless parents and students.

The 1990 Amendments provide a unique opportunity for advocacy, as participating states must now revise their state plans to comply with these changes. ED has encouraged states to use public hearings or other mechanisms to obtain "significant public comment" on their revised plans.[24] Homeless persons and their advocates can take this opportunity to work to make sure that state officials seek out the views of the homeless in meeting the education needs of these children and revising and implementing state plans.

Critical to meaningful implementation of the 1990 Amendments will be the extent to which amended plans actually resolve, rather than simply identify or discuss, the problems the Act now explicitly directs them to "address" (including lack of transportation and enrollment delays caused by immunization requirements, residency requirements, guardianship issues, and lack of birth certificates, school records or other documentation). Of equal importance will be the rigor with which states and local districts identify, review and revise the laws, regulations, practices and policies that serve as barriers to educational access, attendance and success. The mandate to do so, for example, affords an opportunity to insist that states address the unique needs of homeless women and children who have fled domestic violence and who fear that, if the children attend school, abusers will be able to locate the family by accessing school records (which contain addresses) or tracing the transfer of school records from the original school to the new one.

Continuing issues for individuals who are homeless and their advocates include the incorporation of parental choice regarding school enrollment into the McKinney "best interest" standard; the development of impartial procedures for resolving disputes about school placement (including procedures that are speedy and do not disrupt a child's education); and guaranteeing that any "best interest" standard, including one based on parental choice, is meaningful by forcing states to allocate sufficient resources to provide homeless children with appropriate services in and adequate transportation to their educational programs.[25] The transportation provisions of 1990 McKinney Act Amendments provide advocates with the means to argue that the latter is now a federal requirement.[26]

ENDNOTES

1. This memorandum supplements the May 1990 memorandum of the same title, included in the Center for Law and Education's "Materials on the Education of Homeless Children" (May 1990 edition).

2. Pub. L. 100-77 (7/22/87), *codified at* 42 U.S.C. §§11301 - 11472 (hereinafter "McKinney Act of 1987").

3. Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100-628, 102 Stat. 3224-3285 (hereinafter "1988 McKinney Amendments").

4. Id., Title VII, Subtitle A, §702.

5. Stewart B. McKinney Homeless Assistance Amendments Act of 1990, Pub. L. 101-645, 1990 U.S. Code Cong. & Ad. News (104 Stat.) 4673 (hereinafter "1990 McKinney Amendments").

6. Id., Title VI, Subtitle A, §612.

7. 1990 McKinney Amendments, §612(a)(2), *amending* 42 U.S.C. §11431(2).

8. Id., §612(b)(8)(C), *amending* 42 U.S.C. §11432(e).

9. Id. For an analysis concluding that the 1990 McKinney Amendments require states to ensure that homeless students are provided with transportation necessary to attend the school that the McKinney Act otherwise entitles them to attend, see the Center for Law and Education's Comments on Transportation Provisions of Massachusetts Draft Revised State Plan to Address the Educational Needs of Homeless Children and Youth (April 25, 1991), included in this supplement. For the U.S. Department of Education's interpretation of the transportation requirements, *see* Memorandum to State Coordinators for Education of Homeless Children and Youth from Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education (May 6, 1991), included in this supplement.

10. Id.

11. Id.

12. Id., §612(b)(7), *amending* 42 U.S.C. §11432(d).

13. Id., §612(b)(9), *amending* 42 U.S.C. §11432(e).

14. Id.

15. Id.

16. Id.

17. Id., §612(c), *amending* 42 U.S.C. §11433. At least 50% of state grants to local districts must be used to provide tutoring, remedial education or other direct educational services to homeless children or youth. Id. At least 35%, but not more than 50%, of such amounts may be used for "related activities," including, among other things, expedited evaluations of the strengths and needs of homeless children; professional development for school personnel; the provision of referral services to homeless children and youth for physical and mental health services; the defraying of transportation costs; early childhood programs; education-related before- and after-school programs; the payment of costs associated with tracking, obtaining and transferring records; parent education and training; coordination

between schools and agencies providing services to homeless children and youth; counseling, social work and psychological services; and activities to address needs arising from domestic violence. Id.

18. *See* id., §§612(b)(3)(E), *amending* 42 U.S.C. §11432(c), 612(b)(10(C), *amending* 42 U.S.C. §11432(g), 612(c), *amending* 42 U.S.C. §11433.

19. Id., §612(b)(10)(A), *amending* 42 U.S.C. §11432(g).

20. U.S. General Accounting Office, Report to Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Homelessness: Access to McKinney Act Programs Improved but Better Oversight Needed (#RCED-91-21 December, 1990) 5.

21. Id.

22. Id.

23. In response to a request from state coordinators for the education of homeless children and youth, ED has prepared a brief series of "Questions and Answers" on the McKinney Act as amended. *See* Memorandum to State Coordinators for Education of Homeless Children and Youth from Mary Jean LeTendre, Director, Compensatory Education Programs, U.S. Department of Education (May 6, 1991), included in this supplement.

24. *See* Memorandum from John T. MacDonald, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education to Chief State School Officers, February 14, 1991, included in this supplement.

25. For an analysis of the extent to which pre-1990 state plans addressed these and other issues, *see* Shelley Jackson, State Plans for the Education of Homeless Children and Youth: A Selected Survey of 35 States (June 1990) (available from the Center for Law and Education). In preparing this summary and analysis, the Center reviewed the plans of: Alabama, Alaska, Arizona, California, Colorado, Connecticut, the District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia and Wisconsin. For a summary of state plans as they existed in February, 1989, contact the New York State School Boards Association, 119 Washington Avenue, Albany, N.Y. 12210, (518)465-3474, for a copy of its symposium paper, "Educating Homeless Children and Youth: A Policy Analysis" (March, 1989).

26. *See* the Center for Law and Education's Comments on Draft Revised Massachusetts State Plan to Address the Educational Needs of Homeless Children and Youth (April 25, 1991), included in this supplement.

Stewart B. McKinney Homeless Assistance Amendments Act of 1990.

42 USC 11301 note.

TITLE VI—EDUCATION, TRAINING, COMMUNITY SERVICE, AND FAMILY SUPPORT

SEC. 601. SHORT TITLE.

This title may be cited as the "Stewart B. McKinney Homeless Assistance Amendments Act of 1990".

SEC. 602. DEFINITION OF HOMELESS.

Section 103(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11302(b)) is amended to read as follows:

"(b) INCOME ELIGIBILITY.—

"(1) IN GENERAL.—A homeless individual shall be eligible for assistance under any program provided by this Act, only if the individual complies with the income eligibility requirements otherwise applicable to such program.

"(2) EXCEPTION.—Notwithstanding paragraph (1), a homeless individual shall be eligible for assistance under the Job Training Partnership Act.".

Subtitle A—Provisions Relating to Literacy and Education

SEC. 611. STATEWIDE LITERACY INITIATIVE.

(a) REAUTHORIZATION.—Section 702(c)(1) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11421(c)(1)) is amended by

inserting after "and 1990" the following: ", $13,700,000 for fiscal year 1991, and such sums as may be necessary in each of the fiscal years 1992 and 1993,".

(b) APPLICATION.—Section 702(b) of such Act is amended by striking out "and the number" and all that follows through "to be served".

SEC. 612. EDUCATION FOR HOMELESS CHILDREN AND YOUTH. 42 USC 11421

(a) STATEMENT OF POLICY.—Section 721 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11431) is amended—

(1) in paragraph (1), by striking "and" at the end;

(2) in paragraph (2)—

(A) by inserting after "attendance laws" the following: "or other laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and homeless youth";

(B) by inserting ", regulations, practices, or policies" after "such laws"; and

(C) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(3) homelessness alone should not be sufficient reason to separate students from the mainstream school environment.".

(b) GRANTS FOR STATE AND LOCAL ACTIVITIES.—Section 722 of such Act (42 U.S.C. 11432) is amended—

(1) in the section heading by inserting "AND LOCAL" after "STATE";

(2) in subsection (b)—

(A) by striking out "section 1005" and inserting in lieu thereof "part A of chapter 1 of title I"; and

(B) by striking out $50,000 and all that follows through the end thereof and inserting the following "$50,000. The Secretary shall reserve 0.1 percent of the amount appropriated for each fiscal year to be allocated by the Secretary among the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658), according to their respective need, as determined by the Secretary, except that no such territory shall receive less in fiscal year 1991 than it received in fiscal year 1990. The Secretary may also reserve not to exceed 1 percent of the amount appropriated for each fiscal year for programs for Indian students served by schools funded by the Secretary of the Interior, as determined under the Indian Self-Determination and Education Assistance Act consistent with the purposes of this Act. As used in this subsection, the term 'State' shall not include the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or Palau."; Territories.

(3) in subsection (c)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(B) by inserting after paragraph (1) the following new paragraph:

"(2) to provide activities for and services to homeless children and homeless youths that enable such children and youths to enroll in, attend, and achieve success in school;";

(C) by striking out "and" at the end of paragraph (3) (as so redesignated);

(D) by striking out the period at the end of paragraph (4) (as so redesignated) and inserting in lieu thereof a semicolon; and

(E) by adding at the end thereof the following new paragraphs:

"(5) to develop and implement programs for school personnel to heighten awareness of specific problems of the education of homeless children and youth; and

"(6) if amounts appropriated for the applicable fiscal year exceed the amount appropriated for fiscal year 1990 under this section, to provide grants to local educational agencies for purposes of this section, and if such amounts appropriated do not exceed the amount appropriated for fiscal year 1991, the State education agency, at the discretion of such agency, may provide such grants.";

(4) in subsection (d)(1)—

(A) by striking "annually" and inserting "once every 2 years,";

(B) by inserting after "shall include" the following: "the number of homeless children and homeless youths enrolled in schools in the State, determined through random sampling or other statistical methods that ensure that such children and youths are not overtly identified as being homeless,";

(C) by striking "and the difficulties" and inserting "the difficulties"; and

(D) by inserting before the semicolon the following: ", and any progress made by the State educational agency and local educational agencies within the State in addressing such problems and difficulties";

(5) in subsection (d)(2) by striking "and" at the end thereof;

(6) in subsection (d)(3)—

(A) by striking "of each year" and inserting ", 1991, and on December 31 of every second year thereafter"; and

(B) by striking the period at the end thereof and inserting a semicolon; and

(7) in subsection (d), by adding at the end thereof the following new paragraphs:

"(4) facilitate coordination between the State education agency, the State social services agency, and other agencies providing services to homeless children and youth and their families; and

"(5) develop relationships and coordinate with other relevant education, child development, or preschool programs and providers of services to homeless children, homeless families, and runaway and homeless youths (including domestic violence agencies, shelter operators, transitional housing facilities, runaway and homeless youth centers, and transitional living programs for homeless youths) in order to improve the provision of comprehensive services to homeless children and homeless youths and the families of such children and youths.";

(8) in subsection (e)(1)—

(A) by striking "and" at the end of subparagraph (A);

(B)(i) by inserting "prompt" before "resolution" in subparagraph (B); and

(ii) by striking the period at the end of subparagraph (B) and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(C) develop programs for school personnel (including principals, attendance officers, teachers, and enrollment personnel), to heighten the awareness of such personnel of the specific educational needs of runaway and homeless youths; and

"(D) ensure that homeless children and homeless youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local food programs.";

"(E) ensure that homeless children and homeless youths who meet the relevant eligibility criteria are able to participate in Federal, State, or local before- and after-school care programs and provide for the disclosure of data concerning the participation of such children in such programs in plans submitted by the State after the initial plan of the State;

"(F) address problems set forth in the report provided to the Secretary under subsection (d)(3);

"(G) address problems with respect to the education of homeless children and homeless youths, including problems caused by—

"(i) transportation issues; and

"(ii) enrollment delays which are caused by—

"(I) immunization requirements;

"(II) residency requirements;

"(III) lack of birth certificates, school records, or other documentation; or

"(IV) guardianship issues;

"(H) demonstrate that the State and local educational agencies in the State have developed and will review and revise policies to remove barriers to the enrollment and retention of homeless children and homeless youths in schools of the State; and

"(I) ensure that the State educational agency and local educational agencies within the State will adopt policies and practices to ensure that homeless children and homeless youths are not isolated or stigmatized.";

(9) in subsection (e)—

(A) by striking out "(6)" in paragraph (2) and inserting in lieu thereof "(9)";

(B) by amending paragraph (3) to read as follows:

"(3)(A) The local educational agency of each homeless child and each homeless youth shall either—

"(i) continue the child's or youth's education in the school of origin—

"(I) for the remainder of the academic year; or

"(II) in any case in which a family becomes homeless between academic years, for the following academic year; or

"(ii) enroll the child or youth in any school that nonhomeless students who live in the attendance area in which the child or youth is actually living are eligible to attend;

whichever is in the child's best interest or the youth's best interest.

"(B) In determining the best interests of the child or youth for purposes of making a school assignment under subparagraph (A), consideration shall be given to a request made by a parent regarding school selection.

"(C) For purposes of this paragraph, the term 'school of origin' shall mean the school that the child or youth attended when permanently housed, or the school in which the child or youth was last enrolled.";

(C) by inserting after "including" in paragraph (5) the following: "transportation services,";

(D) by striking "The schools records" in paragraph (6) and inserting the following: "Any record ordinarily kept by the school, including immunization records, academic records, birth certificates, guardianship records, and evaluations for special services or programs,"; and

(E) by adding at the end thereof the following new paragraphs:

"(7) Each local educational agency serving homeless children or youth that receives assistance under this title shall coordinate with local social services agencies, and other agencies or programs providing services to such children or youth and their families.

"(8) Each local educational agency that receives assistance under this title shall designate a homelessness liaison to ensure that—

"(A) homeless children and youth enroll and succeed in the schools of that agency; and

"(B) homeless families, children and youth receive educational services for which they are eligible, and referrals to health care services, dental services, mental health services, and other appropriate services.

State coordinators and local educational agency liaisons shall inform school personnel, service providers and advocates working with homeless families of the duties of the liaisons.

"(9) Each State and local educational agency shall review and revise any policies that may act as barriers to the enrollment of homeless children and youth in schools selected in accordance with paragraph (3). In reviewing and revising such policies, consideration shall be given to issues concerning transportation, requirements of immunization, residency, birth certificates, school records, or other documentation, and guardianship. Special attention shall be given to ensuring the enrollment and attendance of homeless children and youths who are not currently attending school."; and

(10) in subsection (g)—

(A) by striking out "$5,000,000" in paragraph (1) and all that follows through the end thereof and inserting in lieu thereof "$50,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.";

(B) by redesignating paragraph (2) as paragraph (4); and

(C) by inserting after paragraph (1) the following new paragraphs:

"(2) The State educational agency may reserve not to exceed 5 percent of the amount received by such agency under this section in each fiscal year, or an amount equal to the amount received by such State agency for State activities under this section in fiscal year 1990, whichever is greater, to conduct activities under paragraphs (1) through (5) of subsection (c).

"(3)(A) In any fiscal year in which the amount appropriated under paragraph (1) does not equal or exceed $100,000,000, the State educational agency shall use funds not otherwise reserved under paragraph (2) to award grants to local educational agencies in accordance with subsection (c)(6).

"(B) In any fiscal year in which the amount appropriated under paragraph (1) equals or exceeds $100,000,000, the State educational agency shall use funds not otherwise reserved under paragraph (2) to allocate to each local educational agency an amount that bears the same ratio to amount not otherwise reserved as the aggregate amount received by such local educational agency under part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 for such fiscal year bears to the aggregate amount received by all local educational agencies in the State for purposes of carrying out such part for such fiscal year.".

(c) GRANTS FOR THE EDUCATIONAL SUCCESS OF HOMELESS CHILDREN AND YOUTH.—Section 723 of such Act (42 U.S.C. 11433) is amended to read as follows:

"SEC. 723. LOCAL EDUCATIONAL AGENCY GRANTS FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH.

"(a) GENERAL AUTHORITY.—

"(1) GRANTEES AND PURPOSE OF GRANTS.—The State educational agency shall, in accordance with section 722(c)(6) and from amounts made available to such agency under section 722, make grants to local educational agencies for the purpose of facilitating the enrollment, attendance and success of homeless children and youths in schools.

"(2) USE OF GRANTS.—Unless otherwise specified, services under paragraph (1) may be provided through programs on school grounds or at other nonsectarian facilities. Where services are provided through programs on school grounds, such services may also be made available to children or youths who are determined by the local educational agency to be at risk of failing in or dropping out of schools, except that priority for such services shall be given to homeless children and homeless youths. To the maximum extent practicable, services shall be provided through existing programs and mechanisms that integrate homeless individuals with nonhomeless individuals.

"(3) REGULAR ACADEMIC PROGRAM.—Services provided under this section are not intended to replace the regular academic program.

"(b) AUTHORIZED ACTIVITIES.—

"(1) PRIMARY ACTIVITIES.—Not less than 50 percent of amounts provided under a grant under this section shall be used to provide tutoring, remedial education services, or other education services to homeless children or homeless youths.

"(2) RELATED ACTIVITIES.—Not less than 35, nor more than 50, percent of the amounts provided under a grant under this section may be used for activities that may include—

"(A) the provision of expedited evaluations of the strengths and needs of homeless children and homeless youths, including needs and eligibility for programs and services (including gifted and talented programs, special education programs, programs for students with limited English proficiency, and remedial services);

"(B) professional development for educators and other school personnel that is designed to develop awareness and sensitivity to the needs of homeless children and homeless youths and the rights of such children and youths under this Act;

"(C) the provision of referral services to homeless children and homeless youths for medical, dental, mental, and other health services;

"(D) the provision of assistance to defray the excess cost of transportation for students not provided under section 722(e)(5) and not otherwise provided through Federal, State, or local funding, where necessary to enable students to attend the school selected under section 722(e)(3);

"(E) the provision of developmentally appropriate early childhood programs for preschool age children;

"(F) the provision of before- and after-school and summer programs for homeless children or homeless youths in which a teacher or other qualified individual provides tutoring, homework assistance, and supervision of educational activities;

"(G) where necessary, the payment of fees and other costs associated with tracking, obtaining, and transferring records necessary to enroll homeless children or homeless youths in school, including birth certificates, immunization records, academic records, guardianship records, and evaluations for special programs or services;

"(H) the provision of parent education and training to the parents of homeless children and homeless youths about the rights of and resources available to such children and youths;

"(I) the development of coordination between schools and agencies providing services to homeless children and homeless youths;

"(J) the provision of counseling, social work and psychological services, including violence counseling, and referrals for such services;

"(K) activities to address the particular needs of homeless children and homeless youths that may arise from domestic violence;

"(L) activities to develop and implement programs for school personnel to heighten the awareness of such personnel of the specific educational needs of runaway and homeless youths;

"(M) the adaptation of space and the purchase of supplies for nonschool facilities made available under subsection (a)(2) to provide services under this subsection;

"(N) the provision of school supplies to be distributed at the shelter or temporary housing facilities; and

"(O) the provision of such other extraordinary or emergency assistance determined by the Secretary as essential to enable homeless children and youth to attend school.

"(3) ELIGIBILITY.—No State or local educational agency may receive a grant under this section unless the State in which the agency is located has submitted a State plan as required by section 722(e).

"(c) AWARDS.—

"(1) BASIS.—Except as provided in section 722(g)(3)(B), from amounts appropriated for each fiscal year under section 722(g), the State educational agency may award grants under this section to local educational agencies submitting an application under subsection (d) on the basis of the need of such agencies.

"(2) DETERMINATION.—In determining need under paragraph (1), the State educational agency may consider the number of homeless children and homeless youth enrolled in preschool, elementary, and secondary schools within the area served by the agency, and shall consider the needs of such children and youth, and the ability of the agency to meet such needs. Such agency may also consider—

"(A) the extent to which the proposed use of funds would facilitate the enrollment, retention, and educational success of homeless children and youth;

"(B) the extent to which the application reflects coordination with other local and State agencies that serve homeless children and youth, as well as the State Plan required by section 722(e);

"(C) the extent to which the applicant exhibits in the application and in current practice a commitment to education for all homeless children and youth in its jurisdiction; and

"(D) other criteria as the agency determines appropriate.

"(d) APPLICATION.—

"(1) IN GENERAL.—A local educational agency that desires to receive a grant under this section shall submit an application to the State educational agency at such time, in such manner, and containing or accompanied by such information as the State agency may reasonably require according to guidelines issued by the Secretary. Each such application shall include—

"(A) a description of the services and programs for which assistance is sought and the problems sought to be addressed through the provision of such services and programs;

"(B) assurances that the applicant complies with or will use requested funds to come into compliance with paragraphs (3) through (9) of section 722(e);

"(C) an assurance that assistance under the grant will supplement and not supplant funds used before the award of the grant for purposes of providing services to homeless children and homeless youths; and

"(D) a description of policies and procedures that the agency will implement to ensure that activities carried out by the agency will not isolate or stigmatize homeless children and homeless youth.

"(3) TERM OF AWARDS.—Grants awarded under this section shall be for terms of not to exceed 2 years.

"(e) REPORTS.—Each State educational agency that receives a grant under this section for any fiscal year shall, as part of the plan of the State submitted under section 722(c)(4), provide to Secretary data concerning—

"(1) the number of homeless children and homeless youths served with assistance provided under the grant under this section; and

"(2) a description of the success of the program under this section in allowing homeless children and homeless youths to enroll in, attend, and succeed in school.".

(d) NATIONAL RESPONSIBILITIES.—Section 724(b) of such Act (42 U.S.C. 11434) is amended—

(1) in paragraph (1) by adding at the end thereof the following new sentences: "In reviewing the State plans submitted by the State educational agencies under section 722(e), the Secretary shall evaluate whether State laws, policies, and practices described in such plans adequately address the problems of homeless children and homeless youth relating to access to education and placement as described in such plans.";

(2) by redesignating paragraphs (2) and (3) as paragraphs (4) and (5), respectively;

(3) by inserting after paragraph (1) the following new paragraphs:

Government contracts.

"(2)(A) The Secretary, in consultation with persons and organizations that are knowledgeable about the needs of homeless children and youth, shall, through the awarding of a grant, or through entering into a contract or cooperative agreement, conduct a study to determine the best means of identifying, locating, and counting homeless children and youth for the purposes of this subtitle. Such persons and organizations to be consulted shall include representatives of State coordinators, local educational agencies with substantial numbers of homeless children and youth, local government agencies with responsibility for administering homeless shelters, and advocacy groups representing the interests of homeless children and youth. The Secretary shall also consult with the Secretary of Health and Human Services and the Secretary of Housing and Urban Development, as appropriate, in carrying out this paragraph.

"(B) The study conducted under subparagraph (A) shall consider—

"(i) the appropriate definition of the terms 'homeless child' and 'homeless youth';

"(ii) the experience of the 1990 Census in identifying, locating, and counting homeless children and youth;

"(iii) appropriate methodologies for identifying, locating, and counting such children and youth, including using schools, shelters, and other social service agencies to collect data; and

"(iv) the projected accuracy of the methodologies identified in clause (iii), and the costs associated with the use of each methodology;

to determine the number of homeless children and youth in the United States to create as accurate an account as possible of the number, location, and living circumstances of such children and youth, including the number of such children and youth that are attending school regularly, part-time, or not at all, and reasons for the nonattendance of such children and youth.

Reports.

"(C)(i) Not later than 240 days after the date of enactment of this paragraph, the Secretary shall prepare and submit, to the appropriate committees of Congress, a report containing the results of the study conducted under subparagraph (A) and the estimated costs of making the estimates required under clause (ii).

Government contracts.

"(ii) Not later than December 1, 1992, the Secretary, in consultation with the appropriate committees of Congress, and through the use of appropriate statistical methodology, shall, through a grant, contract or cooperative agreement, determine accurate estimates of

the number of homeless children and youth throughout the Nation and the number of such children and youth attending school.

"(D) The Secretary may reserve not more than $250,000 from amounts appropriated under section 722(g) in 1991 to carry out the study required under subparagraph (A).

"(E) There are authorized to be appropriated such sums as may be necessary in 1992 to prepare the report and estimates required under subparagraph (C).

Appropriation authorizations.

"(3) The Secretary shall provide such support and technical assistance to the State educational agencies as is required by such agencies to carry out their responsibilities under this subtitle,"; and

Technical assistance.

(4) by adding at the end thereof the following new paragraphs:

"(5) The Secretary shall conduct evaluation and dissemination activities of programs designed to meet the educational needs of homeless elementary and secondary school students.

"(6) The Secretary shall require applications for grants under this subtitle to be submitted to the Secretary not later than the expiration of the 60-day period beginning on the date that funds are available for purposes of making such grants and shall make such grants not later than the expiration of the 120-day period beginning on such date.

"(7) The Secretary, based on the information received from the States and information gathered by the Secretary under paragraph (1), shall determine the extent to which State educational agencies are ensuring that each homeless child and homeless youth has access to a free appropriate public education as described in section 721(1).".

SEC. 613. REPORTING REQUIREMENT.

Subtitle B of title VII of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11431 et seq.) is amended—

(1) by redesignating section 725 as section 726; and 42 USC 11435.

(2) by inserting after section 724 the following new section:

"SEC. 725. REPORTS. 42 USC 11434

"Not later than 2 years after the date of enactment of this subsection, the Comptroller General of the United States, in consultation with the Secretary, shall prepare and submit to the appropriate Committees of Congress a report containing the findings of a study conducted to determine the most effective method of distributing funds provided under this subtitle to State educational agencies and local educational agencies.".

Subtitle B—Job Training for the Homeless

SEC. 621. REAUTHORIZATION OF CERTAIN PROGRAMS WITHIN THE STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT.

(a) JOB TRAINING FOR THE HOMELESS.—

(1) APPLICATIONS.—Section 733 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11443) is amended—

(A) by inserting "(a) IN GENERAL.—" before "Each applicant";

(B) in subsection (a)(2), by inserting before the semicolon the following: "or other related programs providing services necessary to address the multiple needs of homeless individuals";

20 percent of the total security deposit from their own funds. Finally, loan administrators will have to offer financial counseling to the loan recipients.

At the request of the Committee on Education and Labor, the Committee is inserting the enclosed letter which relates to the inclusion of the McKinney Education and Labor programs in the bill.

COMMITTEE ON EDUCATION AND LABOR,
Washington, DC, June 5, 1990.

Hon. HENRY B. GONZALEZ,
Chairman, Committee on Banking, Finance and Urban Affairs,
Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: As Chairman of the Committee on Education and Labor, I am writing to thank you for your consideration of this Committee's proposed amendments to the Stewart B. McKinney Act providing services to homeless individuals and families.

As you know, under the Rules and precedents of the House, the Education and Labor Committee has jurisdiction over legislation relating to the education and training of the homeless as well as the provision of social services to them through the Community Services Block Grant (CSBG).

It is my understanding that because this measure is under some time pressure, you have agreed to include our provisions during your Committee's consideration of this legislation with the understanding that their inclusion shall not be considered a precedent in derogation of the Committee on Education and Labor's jurisdiction in the future.

Each of the provisions under consideration has been cleared with the Chairman and Ranking Minority Member of the Education and Labor Committee. I do want to emphasize, however, that while the Education and Labor Committee will waive sequential referral of H.R. 1180, if the Committee's proposed amendments are included in H.R. 1180, this waiver does not extend to other provisions of H.R. 1180 should any such provisions include matters within the jurisdiction of the Education and Labor Committee.

Again, Mr. Chairman, I very much appreciate your consideration of this matter and your willingness to include our proposals to the McKinney reauthorization during your Committee's markup.

Sincerely,

AUGUSTUS F. HAWKINS,
Chairman.

TITLE V—EDUCATION, TRAINING, AND COMMUNITY SERVICES PROGRAM

The McKinney Education of Homeless Children and Youth program is intended to ensure homeless children access to a free and appropriate public education. Three years after the enactment of this program, national reports estimate that a significant number of homeless school-aged children are not attending school regularly. The Committee bill addresses a number of problems which are keeping homeless children out of school or hindering their achievement. It reiterates Congress' intent that being homeless should not prevent access to a free and appropriate public education.

The McKinney Act originally required States to remove residency-related policies which were keeping homeless children out of

school. The Committee is aware that other barriers to regular school attendance and achievement have been identified, and that residency requirements may still improperly hinder children's school attendance if they do not have a permanent address. The Committee bill directs States to address remaining barriers, specifically including residency requirements, problems with school and immunization record transfer, transportation, and guardianship requirements and demonstrate that the State and local educational agencies have developed and will implement and enforce policies to remove barriers to the enrollment and retention of homeless children and homeless youth.

Confusion has arisen in many States about language in the original statute allowing children to remain in their original school district for the remainder of the school year. The bill clarifies the Committee's intention that children who become homeless during the summer be allowed to remain in their current-school during the following academic year. In addition, the Committee bill clarifies that homeless children and youth should be allowed to remain in their original school, even if they are temporarily sheltered in another part of their original district.

The Committee is concerned that homeless children often are not receiving the services for which they are eligible, in a comprehensive manner. The Committee bill directs the coordinators to work with parents, education agencies and providers of services for homeless children to improve the provision of appropriate education, nutrition, and pre- and after-school programs (including Head Start, special education, school breakfast and lunch, recreation programs, etc.) to homeless children and youth.

Homeless children's attendance and achievement are hindered by a number of other problems, including lack of transportation, school supplies, and clothing; inadequate nutrition; lack of information about other available services such as medical, dental, mental, and other services; and lack of information about children's needs and rights among those who work with them. The Committee is aware that many jurisdictions have been unable to meet these needs because of inadequate resources. The Committee bill creates a new demonstration grant program to enable State and local education agencies to provide and support services as are necessary to ensure the education of homeless children and youth. The Committee intends that services should be provided to homeless children in the mainstream school environment whenever possible, and that each participating jurisdiction should design a range of services which meet the needs identified in the State's plan.

The Committee is particularly concerned about the needs of runaway and homeless youth and intends that all protections and benefits of this program should be fully extended to them.

Statements Required in Accordance With House Rules

In accordance with clause 2(l)(2)(B), 2(l)(3), and 2(l)(4) of rule XI and clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statements are made:

STEWART B. McKINNEY HOMELESS ASSISTANCE AMENDMENTS ACT—CONFERENCE REPORT

Mr. BREAUX. Mr. President, I submit a report of the committee of conference on H.R. 3789 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3789) to amend the Stewart B. McKinney Homeless Assistance Act to extend programs providing urgently needed assistance for the homeless, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the confereees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 26, 1990.)

Mr. KENNEDY. Mr. President, today the Senate is considering the conference report of the Stewart B. McKinney Homeless Assistance Act of 1990. The amendments will extend the McKinney Act programs for 3 years and enhance their effectiveness as well as add new initiatives aimed at homelessness prevention. I believe that this piece of legislation is one of the most important ones that we will pass this session.

Homelessness is a scourge on this country. Families with children are the fastest growing segment of the homeless population. There are estimates that place the number of homeless in the United States between a half million and several million. They are families with children, single parents with children, the mentally ill, substance abusers, and runaway youths. The difference between a homeless person and a nonhomeless person is a matter of economic and social support networks. This is a crisis that we can change and that we must change.

The Congress enacted the McKinney Homeless Assistance Act 4 years ago to provide emergency food, shelter, mental health and health care, job training, and education for adults, youth and children. Over the past 4 years, the number of homeless has increased dramatically. It is to our great discredit that this rich Nation should have individuals and families living on its streets. Now more than ever we must pursue efforts to help them out of homelessness and for those at risk of homelessness, avert a tragic situation.

This conference agreement includes several provisions, new and reauthorized, which further current assistance to this population. The education portion of the bill includes a literacy program for adults to aid them in efforts to become employable and self-sufficient. It also includes important changes to educational access for children and youth. Homeless children have been denied the education promised to all young people because they do not have a stable address or cannot afford the transportation to the nearest school. This bill attempts to remove the barriers placed before those children and requires teachers to be aware of, and respect, the specific educational needs of homeless children and youth. If we are to ensure that homeless children do not remain in the cycle of homelessness through adulthood, we must dedicate ourselves to giving them an education equal to those of nonhomeless children.

I am especially pleased to see included in the agreement a new program, the family support centers. Many families live on the edge between housing and homelessness. This program will provide comprehensive support services to enhance the social, physical, educational, and emotional development of low-income families. These services will be provided through family case managers who can address their specific needs so that families can become self-sufficient.

We have also included Senator MIKULSKI's Gateway Program to provide education and training assistance onsite or near to those families living in public housing.

The health needs of homeless individuals also receive important assistance in this bill. The conference report provides housing-based health services to the physically and mentally ill. It includes Senator DOMENICI's PATH provision on projects to aid the transition from homelessness. This provision, cosponsored by Senator DURENBERGER, is especially needed for homeless individuals suffering from mental illness or substance abuse.

Homelessness is our national shame. But it is a problem that we can end if we are willing to help individuals and families by providing the educational, employment, health, and other supportive tools they need. We have waited too long. Now is the time to take meaningful action.

Mr. GONZALEZ. Mr. Speaker, I yield 5 minutes to the gentlewoman from New York [Ms. SLAUGHTER].

Mr. Speaker, allow me to say that the gentlewoman is a member of the Committee on Education and Labor and therefore would be representing that committee at this point.

Ms. SLAUGHTER of New York. I thank the chairman for yielding to me.

Mr. Speaker, I want to thank the chairman and members of his committee, and the members of the Committee on Education and Labor for including in this enormously important piece of legislation to provide for the education of homeless children.

I certainly want to thank MARGE ROUKEMA because she has been so supportive, ever since I have known her, of family issues.

Let me tell you a little bit about this bill and what we are doing.

The figures vary on how many homeless children there are in America today, but the average is 750,000. These are American children who live in cars, warehouses, shelters, wherever; families that used to work and for various reasons the parents are dysfunctional, have lost their jobs, and these children get up every day in a strange place, wondering where they can find breakfast that day.

□ 1350

Ofttimes one of the most difficult things to do is to get them to school. But there are stories of children in America who have gone through the most appalling conditions to do that. There are children who live in the subways in New York City who go to school every day. There are children who follow the school bus route, circuitous as it may be, because that is the only way they know to get from point A to point B to be at school. There are children who get up 2 hours early every morning in a shelter to go back to where they used to live to try to get to school. Had it not been for understanding teachers and school districts, some of these children would never have gotten in.

But the statistics are that only one out of four can go on a regular basis. The reasons are that they do not always meet the requirements for a birth certificate, the shot requirements, and the district residence requirements that they might need to go to school.

This bill does away with that. It takes down all those artificial barriers that keep young people from getting an education. It is a modest appropriation. It allows some innovative money for States to come up with programs to help these children get an education.

It gives them a quiet place to study. I ask Members to try to imagine what it is like if you had to carry everything you own with you every day and try to still get a chance to sit down and study your lessons every day. They will be able to study before and after school, to get a breakfast, to get a tutor, and to get pencils, papers, books, and things that most American children take for granted. And indeed, if you were to ask any American, they would say that these are things every American child is entitled to have, because we have always believed that education is the foundation of the economy in this country, and it follows that if we allow 750,000 to million children to grow up untrained, uneducated, and unhealthy, then we have no right to expect that those million children will be productive members of this society, paying taxes, paying social security, but will instead be a drain on society.

This bill also allows and encourages the gifted and talented children among that pool to receive the encouragement they need and the help they need. There is one story of a young girl in New York City who lived in a shelter, who graduated as valedictorian of her high school class. When we realize what that child had to go through to achieve that, we wonder what she could be with some encouragement and some help. We hope now that she will have an opportunity to go on to college, but we do not know that she will.

These children are unmarked, of times uncounted, and unregarded. That is a disgrace in this country, and no American wants that to happen.

I am pleased now that Congress is beginning to address this as part of the McKinney Act. I think it is something Mr. McKinney would have been pleased with. It is important for all of us if we hope to compete in the world markets the way we should. If we want to have our children to be able to take their place along with children from all the other countries, it is important that we not allow a portion of them to go homeless, unfed, and uncared for.

Mr. Speaker, this is a subject that many people can perhaps dismiss as something that is sort of a bleeding-hearts, women's kind of work. I hope not. I see it as an economic program. I do see it as a human decency program, but I am also seeing it as an opportunity for all of us to give a hand out to children who need the support from stable families and parents and teachers who can give that hope to them. We must, as we begin to attack the problem of homelessness, deal with the interim problem of education.

I am delighted to have been able to introduce this measure. I am so pleased that the committees have accepted it. I thank my cosponsors, the gentleman from California [Mr. MILLER] and the gentleman from New York [Mr. SCHUMER] for their support, and I also thank all of the agencies in this country that worked so hard to alleviate the heart-breaking burden of homeless children and who helped us to get this far. My hope is the next year at this time we will be able to look back, after seeing a report on this bill, and know that we have made a difference.

Mr. GONZALEZ. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. MILLER], representing the Committee on Education and Labor.

(Mr. MILLER of California asked and was given permission to revise and extend his remarks.)

Mr. MILLER of California. Mr. Speaker, I rise in support of the conference agreement to amend the Stewart B. McKinney Homelessness Assistance Act, to extend programs providing urgently needed assistance to the Nation's homeless population. I want to thank my colleague from Minnesota [Mr. VENTO] for his leadership on this issue and his hard work on this legislation.

I am especially pleased that this bill includes provisions to better serve homeless families and their children. First, the legislation authorizes a new Homeless Prevention Demonstration Program. This is a long overdue effort, designed to fund family support centers that target comprehensive support services to families and individuals at risk of homelessness living in or near low-income housing and also gateway programs that provide literacy and basic skills training programs in public housing authorities.

As the Select Committee on Children, Youth, and Families has documented, families with children are the fastest growing group among the homeless. Sheltering and protecting these families is of course a national priority, Mr. Speaker, but this growth cannot be tolerated. These demonstration efforts provide a new opportunity to prevent homelessness in the first place, and I applaud the conferees for reaching agreement to include these timely provisions.

I am especially gratified that provisions from the Access to Education for Economic Security Act, a bill introduced by Ms. SLAUGHTER of New York, and my colleague from New York, Mr. SCHUMER, cosponsored have been incorporated into this legislation.

Without an education, homeless children run a high risk of continuing a cycle of poverty. The Access to Education for Economic Security Act builds on education provision in the Stewart McKinney Act to provide the necessary financial and technical support to State and local educational agencies to ensure that homeless children and youth enroll and succeed in public schools.

In a world where nothing remains constant, school is an environment that helps meet emotional as well as academic needs. Homeless children face tremendous obstacles in their pursuit of an education. Routine paperwork, such as obtaining birth certificates or medical or academic records, can be an enormously complicated procedure for families with no permanent address. The Access to Education for Economic Security Act helps to remove these, and other barriers in the educational system, faced by homeless children and their families.

The McKinney Homeless Act is a response to the crisis of homeless people. For both our cities and our suburbs, homeless populations have become a permanent fact of life. And whether resulting from the scarcity of affordable housing, or the inadequacy of public benefits, or a lack of jobs, or an increase in family crises—or some combination of these—the reality is a significant portion of this Nation's homeless population are families with children. ...

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202-6132

MAY 6 1991

MEMORANDUM TO STATE COORDINATORS FOR EDUCATION OF HOMELESS CHILDREN AND YOUTH

SUBJECT: Questions and Answers on the Stewart B. McKinney Homeless Assistance Act

At our meeting on March 25 and 26, you asked that several questions you had on the McKinney Act requirements, and the Department's interpretation of them, be distributed to you. Attached are the questions you raised--both at our meeting and those previously submitted by Peggy Jackson-Jobe--and our responses to them.

Mary Jean LeTendre
Director
Compensatory Education Programs

Attachment

Q.1 What standards must a State educational agency (SEA) meet as it revises its State plan? Is there a suggested format?

A. There is no suggested format for the State plan. To be acceptable, the plan must explain how the State will address each requirement in Section 723(e) of the Act. You need not include those items already addressed in the original plan--only the new items included in the 1990 amendments.

Q.2 Does the initial submission of an application meet the deadline even if the State plan requires revision?

A. No. Applications must be submitted in approvable form by August 30, 1991. However, we urge you to submit applications by May 30 in order to receive awards in July, and to leave sufficient time for any revisions that may be needed.

Q.3 Can a homeless student who is receiving direct services continue receiving the services once the family is permanently housed?

A. Children who are eligible for a service because of homelessness may continue to receive the service until the period of time for which the service was to be provided is over. For instance, a homeless child attending an after-school program who moves into a permanent residence may remain in the after-school program for that school year. However, there is no requirement that the service be continued. Local and State agencies may decide, on a case-by-case basis, when to continue services and when it may be preferable to replace this child with another one who has become homeless.

Q.4 What is the meaning of Section 722(e)(1)(E) of the Act?

A. This section requires that homeless children be afforded the same access to before- and after-school programs as are available to children with established residences. The progress report accompanying your 1992 application must address the data requirement in Section 722(e)(1)(E).

Q.5 By what date can States expect their grant awards for the fifth-year funding?

A. Fifth-year awards will be made in early July 1991 for States that submit applications by May 30, 1991. Applications submitted during June, July, and August will be processed as received. All awards will be made by September 30, 1991.

Q.6 By what date can States expect to receive additional appropriated funds that were not applied for by eligible SEAs?

A. We anticipate that any reallocated funds will be made available to States by September 30, 1991.

Q.7 Will the U.S. Department of Education (ED) provide guidance to State coordinators regarding the process for obtaining counts on the number of homeless children and youth (Section 724(b)(2)(A))?

A. The guidance on counting homeless children that was developed with State coordinators and distributed on August 18, 1990, should be used in conducting the count for 1991. A copy of the guidance is attached. States are only required to provide to ED reports on their counts every two years--the next report being due on December 31, 1991. States that completed counts during calendar year 1990 may submit this data to meet the December 31, 1991, reporting deadline. Please indicate the calendar year (i.e., 1990 or 1991) during which the data were collected.

Q.8 To what extent must a local educational agency (LEA) provide transportation to and from school for homeless children?

A. As a general rule, Section 722(e)(5) of the Act requires that homeless children be provided transportation services that are "comparable" to the services offered to other students in the school selected. For instance, if, in the school selected, children who reside 1-1/2 miles away are provided transportation to and from the schools, transportation should be provided to all homeless children whose temporary residence exceeds the 1-1/2 mile limit.

In some instances, however, even if "comparable" services are provided, lack of adequate transportation may still act as a barrier to school attendance by homeless children. Many neighborhood schools, for instance, may offer no transportation services at all. Homeless children who attend that school and are temporarily housed some distance from it would find lack of transportation a barrier to attendance. Section 722(e)(1)(B) of the Act requires that State plans to address how States will overcome these barriers. In addition, the "Statement of Policy" in Section 721 by the Act requires that States review and undertake to eliminate transportation barriers. Finally, an LEA that receives funds under the Act may use funds authorized for "related activities" to defray the excess cost of transportation not otherwise provided through Federal, State, or local funding. See Section 723(b)(2)(D).

BEST COPY AVAILABLE

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

FEB 14 1991

MEMORANDUM TO CHIEF STATE SCHOOL OFFICERS

SUBJECT: Application for Funding for the Education for Homeless Children and Youth Program

Enclosed is the 1991 application package for funding under the Education for Homeless Children and Youth program authorized by the Stewart B. McKinney Homeless Assistance Act. As you know, the McKinney Act was amended November 26, 1990. Included in the package are copies of the statute, the 1990 amendments, and a draft of the new State allocation chart. The revised Non-Regulatory Guidance and the final allocation chart will be sent to you as soon as they are available.

Please note that the amendments to the Act have resulted in significant changes to the program. For example, the application procedure for grant awards has been revised. Section 724 of the statute requires applications for grants be submitted to the U.S. Department of Education no later than 60 days after fiscal year 1991 funds become available. Therefore, we will not be able to process any applications received after September 1, 1991. However, we are requesting each State to submit applications for funding by May 31, and we will begin to make awards on July 1 when fifth year funds become available.

The amendments also expand the program activities by providing an integrated package of support services to facilitate the enrollment, attendance, and academic success of homeless children in school. For example, the new amendments provide for:

- New planning and restructuring of the States' administration of the program;
- Direct financial assistance to local educational agencies in certain circumstances;
- Greater coordination and cooperation with relevant agencies; and
- The provision of parent education and training.

400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202

State educational agencies must amend their State plans to reflect the changes outlined in Section 721 through Section 724 of the Act. States are not specifically required to hold public hearings on the revised State plan but are strongly encouraged to use hearings or other mechanisms to get significant public comment.

Please return your completed application to:

Mary Jean LeTendre, Director
Compensatory Education Programs
Office of Elementary and Secondary Education
400 Maryland Avenue, SW, Room 2043
Washington, DC 20202-6132

If you have any questions, you may contact Ms. LeTendre at the above address or call (202) 401-1682.

Thank you for your interest in the Education for Homeless Children and Youth program.

John T. MacDonald

Enclosures

cc: State Homeless Contact

EDUCATION FOR HOMELESS CHILDREN AND YOUTH — FY 1991 APPROPRIATION

	1991 ESTIMATED LEA GRANT ALLOCATION UNDER PART A OF CHAPTER 1	ESTIMATED FINAL DISTRIBUTION
UNITED STATES	$5,539,473,188	$7,070,000
ALABAMA	$121,012,657	$139,703
ALASKA	$10,459,206	$50,000
ARIZONA	$58,810,390	$67,894
ARKANSAS	$67,211,366	$77,592
CALIFORNIA	$536,367,892	$619,210
COLORADO	$44,046,524	$50,849
CONNECTICUT	$58,259,365	$67,257
DELAWARE	$15,854,873	$50,000
DIST. COLUMBIA	$25,717,846	$50,000
FLORIDA	$234,523,473	$270,746
GEORGIA	$160,184,231	$184,925
HAWAII	$15,009,447	$50,000
IDAHO	$15,923,843	$50,000
ILLINOIS	$267,643,430	$308,981
INDIANA	$84,052,384	$97,034
IOWA	$42,942,596	$50,000
KANSAS	$34,848,249	$50,000
KENTUCKY	$100,113,513	$115,576
LOUISIANA	$134,072,248	$154,780
MAINE	$27,503,247	$50,000
MARYLAND	$91,411,787	$105,530
MASSACHUSETTS	$127,065,037	$146,690
MICHIGAN	$215,130,203	$248,357
MINNESOTA	$62,421,599	$72,063
MISSISSIPPI	$109,035,399	$125,876
MISSOURI	$93,441,476	$107,873
MONTANA	$14,195,395	$50,000
NEBRASKA	$24,517,432	$50,000
NEVADA	$12,289,855	$50,000
NEW HAMPSHIRE	$12,819,423	$50,000
NEW JERSEY	$181,995,558	$210,105
NEW MEXICO	$40,095,532	$50,000
NEW YORK	$600,179,167	$692,876
NORTH CAROLINA	$134,223,197	$154,954
NORTH DAKOTA	$13,286,049	$50,000
OHIO	$198,331,102	$228,963

EDUCATION FOR HOMELESS CHILDREN AND YOUTH — FY 1991 APPROPRIATION

	1991 ESTIMATED LEA GRANT ALLOCATION UNDER PART A OF CHAPTER 1	ESTIMATED FINAL DISTRIBUTION
OKLAHOMA	$53,976,971	$62,314
OREGON	$43,096,941	$50,000
PENNSYLVANIA	$273,304,832	$315,517
RHODE ISLAND	$20,990,899	$50,000
SOUTH CAROLINA	$86,431,771	$99,781
SOUTH DAKOTA	$16,900,922	$50,000
TENNESSEE	$118,299,111	$136,570
TEXAS	$352,003,675	$406,370
UTAH	$18,887,995	$50,000
VERMONT	$13,146,126	$50,000
VIRGINIA	$113,960,676	$131,562
WASHINGTON	$57,630,734	$66,532
WEST VIRGINIA	$46,282,844	$53,431
WISCONSIN	$79,937,956	$92,284
WYOMING	$7,599,746	$50,000
PUERTO RICO	$220,779,305	$254,879
AMERICAN SAMOA	$0	$50,000
GUAM	$0	$1,463
NORTHERN MARIANAS	$0	$50,000
PALAU	$0	$1,463
VIRGIN ISLANDS	$0	$50,000
BIA	$31,247,693	$50,000

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Comments on

Transportation Provisions of

MASSACHUSETTS DRAFT REVISED STATE PLAN TO ADDRESS THE EDUCATIONAL NEEDS OF HOMELESS CHILDREN AND YOUTH

April 25, 1991

Introduction

The Center for Law and Education ("CLE") is a national Legal Services litigation back-up and support center providing assistance to Legal Services attorneys representing low-income clients in education matters. Through its work with Legal Services attorneys in Massachusetts and elsewhere, CLE has become aware that lack of transportation poses one of the greatest barriers--if not the greatest barrier--to enrollment, attendance and success in school for homeless children. The following comments on the Draft State Plan to Address the Educational Needs of Homeless Children and Youth ("Draft Plan") focus on this barrier.

As explained below, the Draft Plan does not fulfill transportation requirements created by the 1990 amendments to the McKinney Homeless Assistance Act ("the Act"). In addition, and as also explained below, the manner in which the Draft Plan allows transportation costs to be used a criterion for school selection is inconsistent with these new federal mandates.

I. Transportation Rights: Draft Plan §2.2

Under both the Act and the Draft Plan, homeless children may either continue to attend their school of origin, or enroll in any school that homeless students who live in the attendance zone in which they are actually living are eligible to attend. Under the Massachusetts Plan, parents make this choice. This right to choose--as well as the educational rights and needs that should dictate the choice, regardless of who makes it--become meaningless if a child cannot get to the school selected. The 1990 amendments to the McKinney Act impose new requirements to remedy this situation. The Draft Plan, however, does not satisfy them.

With the exception of certain special needs students, the Draft Plan does not promise or require transportation for children living outside of the attendance zone of the school the Act and Draft Plan otherwise entitle them to attend under any circumstances. Even where such a child is living within the same school district, the district has the discretion to refuse transportation. See Draft Plan §2.2(a). The Draft Plan makes no provision for the state to assume responsibility in these or any other circumstances. The ultimate responsibility for providing transportation--if it is to be provided at all--remains with the parent. See, e.g., Draft Plan §2.2(c).

As a practical matter, expecting homeless parents to have the resources to provide or pay

for transportation is unrealistic--especially where the school selected is located in another district, or where there is more than one child in the family. **Placing the transportation burden on parents also contravenes new McKinney Act requirements.**

The Act as amended requires that all homeless children and youth at a minimum be provided with transportation to the extent that lack of transportation is a barrier to enrollment, attendance or success at the particular school the Act entitles them to attend. The transportation mandate appears in various portions of the amendments' text--including changes in the Act's state plan requirements and policy statement--as well as in their legislative history.

A. Directive to Identify and Remove All Barriers to School Attendance, Enrollment and Success: McKinney Act §§721 and 722(e)(1)(H)

Prior to the 1990 Amendments, §721 of the Act stated that it was Congress' policy that "...in any State that has a residency requirement as a component of its compulsory school attendance laws, the State will review and undertake steps to revise such laws to assure that the children of homeless individuals and homeless youth are afforded a free and appropriate public education." With the 1990 amendments, Congress broadened and strengthened that policy. Section 721 as amended states that in addition to reviewing and revising residency requirements, states are now to review and revise all "other laws, regulations, practices or policies that may act as a barrier to the enrollment, attendance or success in school of homeless children and homeless youth." Laws, regulations, practices or policies that deny homeless children and youth the transportation they need to attend school pose just such barriers. Pursuant to McKinney Act policy they must, therefore, be changed.

New requirements governing state plans for the education of homeless children and youth echo this mandate to eliminate transportation barriers. New §722(e)(1)(H), to be codified at 20 U.S.C. §11432(e)(1)(H), requires each State to adopt a plan containing provisions designed to "demonstrate that the State and local education agencies in the State have developed and will review and revise policies to remove barriers to the enrollment and retention of homeless children and homeless youths in the schools of the State..." (Emphasis added). Again, lack of transportation to the school the McKinney Act otherwise entitles a child to attend is a "barrier" to his or her enrollment and retention. And as the emphasized language indicates, states and localities must take action that actually results in the elimination of that barrier, i.e. measures ensuring that appropriate, effective transportation will be provided when needed.

B. Express Mandates for Resolution of Transportation Issues: McKinney Act §§722(e)(1)(G), (e)(5) and (e)(9)

The directive to remove all barriers alone compels States to provide homeless children who so require it with transportation to the school chosen in accordance with the Act's "best interest" test. Additional changes in state plan requirements singling out transportation barriers for special emphasis reiterate and reinforce this mandate.

New §722(e)(9) provides that

> "Each State and local educational agency shall review and revise any policies that may act as barriers to the enrollment of homeless children and youth in schools selected in accordance with paragraph (3). In reviewing and revising such policies,

consideration shall be given to issues concerning transportation...."

(Emphasis added).[1] This language requires that policies creating transportation barriers be among those revised to facilitate school enrollment; it leaves no discretion as to whether or not to do so, or to what degree. While the "revisions" will vary from state to state depending upon the particular transportation issues and underlying policies, practices, laws, regulations, etc. involved, the end result must be the same: policies must be revised so that transportation is actually provided when necessary for homeless children to enroll in the particular school the Act entitles them to attend. In a similar vein, new §722(e)(1)(G) provides that state plans must now "contain provisions designed to...address problems with respect to the education of homeless children and youths, including problems caused by...transportation issues..."

Finally, §722(e)(5) now states that "[e]ach homeless child shall be provided services comparable to services offered to other students in the school selected according to the provisions of paragraph (3), including transportation services..." (Emphasis added). Depending upon the particular circumstances, this provision, too, may require transportation not previously provided.

C. Legislative History

Standing alone, the text of these new McKinney Act provisions--individually as well as collectively--clearly mandate State action to assure that homeless children and youth receive the transportation they need for enrollment, attendance and success in the schools they have a right under the Act to attend. The legislative history of the 1990 Amendments underscores that this is the case as well as Congress' intent.

In the report accompanying the House of Representatives bill that became the 1990 amendments, the Committee on Education and Labor explained that

> "The McKinney Act originally required States to remove residency-related policies which were keeping homeless children out of school. The committee is aware that other barriers to regular school attendance and achievement have been identified...The committee bill directs states to address remaining barriers, specifically including ...transportation...and demonstrate that the State and local education agencies have developed and will implement and enforce policies to remove barriers to the enrollment and retention of homeless children and youth."

House Report No. 101-583(I) as reprinted in 10F U.S. Code Cong. & Admin. News 1990 at p.6417-6418. In addition, a number of Representatives identified the resolution of transportation problems as a priority during debate on the amendments on the floor of the House.[2]

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[1] Pursuant to §722(e)(2) of the Act as amended, "[e]ach [state] plan...shall assure, to the extent practicable under requirements relating to education established by State law, that local educational agencies within the State will comply with the requirements of paragraphs [722(e)](3) through (9)."

[2] See, e.g. the remarks of Representative Slaughter, a co-sponsor of the education provisions of the 1990 amendments, reprinted in the October 10, 1990 Congressional Record beginning at page H9245 ("...[o]fttimes one of the most difficult things to do is to get them to school. But there

In sum, a plan that makes homeless parents ultimately responsible for providing transportation does not satisfy the Act's new requirements. The Draft Plan must be revised to guarantee transportation, shifting the responsibility from parents to the State, LEAs, or some combination thereof.

II. Transportation Costs as a Criterion for School Choice: Draft Plan §1.3(d)

Like the current plan, the Draft Plan places "length of commute/cost of transportation" at the top of the list of criteria to be considered in choosing the school a homeless child will attend, implying that this factor has priority over others such as, for example, "special educational needs of child," "continuity in one educational program," and "relationship of child with teachers." Giving such apparent primacy to cost considerations is particularly inappropriate in view of the Act's new transportation mandates, and particularly dangerous where someone other than the parent makes the ultimate decision regarding placement. The Draft Plan should be amended to clarify that the child's educational needs and related family needs are paramount, and that cost considerations cannot supersede them.

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are stories of children in America who have gone through the most appalling conditions to do that...There are children who follow the bus route, circuitous as it may be, because that is the only way they know to get from point A to point B to be at school. There are children who get up 2 hours early every morning in a shelter to go back to where they used to live to try to get to school..."). See also remarks of Messrs. Goodling and Miller, id.